

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES of AMERICA,)	
)	
Plaintiff,)	8:04CR523
)	
v.)	
)	
MARY E. MONIZ,)	ORDER
)	
Defendant.)	
)	

This matter is before the court on initial review of defendant's "Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody" (§ 2255 motion). (Filing No. 61)

Under Rule 4(b) of the *Rules Governing Section 2255 Proceedings for the United States District Courts*, the court will conduct initial review of the issues raised in defendant's § 2255 motion. Rule 4(b) of the *Rules Governing Section 2255 Proceedings for the United States District Courts* requires initial review of a § 2255 motion, and describes the initial review process:

The motion, together with all the files, records, transcripts, and correspondence relating to the judgment under attack, shall be examined promptly by the judge to whom it is assigned. If it plainly appears from the face of the motion and any annexed exhibits and the prior proceedings in the case that the movant is not entitled to relief in the district court, the judge shall make an order for its summary dismissal and cause the movant to be notified. Otherwise, the judge shall order the United States Attorney to file an answer or other pleading within the period of time fixed by the court or to take such other action as the judge deems appropriate.

After a jury verdict finding defendant guilty on Count I of the indictment charging defendant with assault with a dangerous weapon in violation of 18 U.S.C. § 113(a)(3), Count II of the indictment charging defendant with assault resulting in serious bodily injury

in violation of 18 U.S.C. §§ 113(a)(6) & 1153, and Count III of the Indictment charging defendant with Using a Firearm in Relation to a Crime of Violence in violation of 18 U.S.C. § 924(c)(1)(A), the defendant was committed to the custody of the United States Bureau of Prisons for a term of 24 months on Counts I and II and 120 months on count II to run consecutively to Counts I and II. Neither party filed a direct appeal.

In her § 2255 motion defendant alleges two claims: (1) that she received ineffective assistance of counsel because her counsel advised her twice that if she took the stand counsel would motion the court for removal from the case and that he advised her he could get less time with a plea agreement; and (2) that she received ineffective assistance of counsel based on her attorney's failure to appeal her case.

The United States shall answer the defendant's claims raised in her motion. In addition to any other issues raised in the Answer, the United States shall address whether her claims are barred by procedural default, waiver, or untimeliness.

IT IS ORDERED:

1. That upon initial review, the court finds and concludes that summary dismissal of the defendant's § 2255 motion (Filing No. 61) is not appropriate;
2. That by September 12, 2006 the United States shall answer or otherwise respond to the defendant's § 2255 motion, and shall file an accompanying brief; and
4. That by October 12, 2006 the defendant may file a reply brief.

DATED this 2nd day of August, 2006.

BY THE COURT:

s/ Joseph F. Bataillon
United States District Judge